

MEMORANDUM FOR:

to Mr. [unclear] [unclear],
Two Amendments, 1974, by
Sen. J. Abourezk:
1511: Re funds for police
training

1922: Re CIA's.

Date

disclosed before Congress recognizes the need for immediate action?

There is no question, however, that those sensitive to civil liberties have long understood the need for congressional action to end the dangers of Government snooping. As early as 1971 I introduced legislation for that purpose. Now the public at large has also awakened to the need for legislation to protect their rights against Government snooping. Numerous opinion polls indicate that the people's principal concern today is the preservation of their freedom—freedom which is too easily and too often taken for granted. These polls, including some conducted by Louis Harris, have made the following findings:

Fifty-two percent of the public believes that "things have become more repressive in this country in the past few years."

Seventy-five percent of the public believes that "wiretapping and spying under the excuse of national security is a serious threat to people's privacy;"

Seventy-seven percent of the public believes Congress should enact legislation to curb government wiretapping;"

Seventy-three percent of the public believes Congress should make political spying a major offense.

On the basis of these and other findings, pollster Harris drew two basic conclusions. First, "Government secrecy can no longer be excused as an operational necessity, since it can exclude the participation of the people in their own Government, and, indeed, can be used as a screen for subverting their freedom." Second, "the key to any kind of successful future leadership must be iron bound integrity."

The message of these opinion polls is clear: Congress must enact legislation to end abusive government surveillance practices which violate the fundamental rights and liberties guaranteed by our Constitution. The Government should not be able to use wiretaps and other electronic devices to eavesdrop on citizens without first obtaining a judicial warrant based on probable cause. The Government should not be able to use income tax returns and other computerized, confidential information for political purposes. The Government should not be able to conceal its illicit activities by involving "national security" or the need for secrecy. In a word, the Government should not be able to escape its obligation to adhere to the Constitution and the rule of law. Otherwise, we shall find that unrestrained government power has replaced liberty as the hallmark of our society.

By creating a joint committee of Congress to oversee all government surveillance within the United States, this amendment would do much to prevent the erosion of individual liberty. One does not have to attribute malevolent motives to Government officials in order to realize the need for such legislation. Good intentions are not the criteria for judging the lawfulness or propriety of government action. In fact, the best of intentions often produce the greatest dangers to individual liberty. As Supreme Court Justice Brandeis once observed:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasions of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Relying on this historical judgment, the Supreme Court held in the 1972 Keith case that the Government cannot wiretap American citizens for "domestic security" purposes without court authorization. In issuing this decision, the court declared, as a matter of constitutional law, that the Government's self-discipline is inadequate to protect the individual freedoms guaranteed by the fourth amendment. The Court's judgment was not premised on the malicious dispositions of those who inhabit the executive branch. Rather, the judgment flowed from the conflicting interests which the Government is required to serve. Speaking for a unanimous Court, Justice Lewis Powell examined the evolution and contours of the freedoms protected by the fourth amendment. He then stated:

These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility is to enforce the laws, to investigate and to prosecute. . . . The historical judgment which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressure to obtain incriminating evidence and overlook potential invasion of privacy and protected speech.

In this context, a congressional oversight committee would be a two-edged sword in the effort to end the abuses of government snooping. On the one hand, this committee could provide assurances to the public that government surveillance activities are limited to those conducted by lawful means and for legitimate purposes. On the other hand, the oversight committee could help the executive branch to insure that government agents do not misuse the public authority entrusted to them. Fulfillment of these two functions by the oversight committee would do much to eliminate illegal and unethical government spying.

The need for this congressional oversight committee, then, should not be underestimated. The individual's right to privacy is one of our most cherished liberties. It is fundamental to the concept of democratic self-government where each individual's private thoughts and beliefs are beyond the reach of government. Without that right to privacy, the individual's freedom to participate in and guide his government is jeopardized. Government then becomes a monster to be feared rather than a servant to be trusted.

As Justice Stephen Field stated in 1888:

Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books and papers from the scrutiny of others. Without

enjoyment of this right, all others would lose half their value.

A right so vital to individual liberty and, indeed, to our constitutional system deserves rigorous protection by Congress—the people's chosen representatives. The amendment being offered today provides a timely opportunity to establish that protection and assure the American public that individual freedom is still the foundation of our political system.

Mr. President, I ask unanimous consent to insert in the RECORD the text of the amendment I submit today.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1945

At the end of the bill, add the following new title:

TITLE IV—JOINT COMMITTEE ON GOVERNMENT SURVEILLANCE AND INDIVIDUAL RIGHTS

ESTABLISHMENT

SEC. 401. (a) There is hereby established a Joint Committee on Government Surveillance and Individual Rights (hereinafter referred to as the "joint committee") which shall be composed of fourteen members appointed as follows:

(1) seven Members of the Senate, four to be appointed by the majority leader of the Senate and three to be appointed by the minority leader of the Senate; and

(2) seven Members of the House of Representatives, four to be appointed by the majority leader of the House of Representatives and three to be appointed by the minority leader of the House of Representatives.

(b) The joint committee shall select a chairman and a vice chairman from among its members.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original appointment.

FUNCTIONS

SEC. 402. (a) It shall be the function of the joint committee—

(1) to make a continuing study of the extent and the method of investigation or surveillance of individuals by any department, agency, or independent establishment of the United States Government as such investigation or surveillance relates to the right to privacy, the authority for, and the need for such investigation or surveillance, and the standards and guidelines used to protect the right to privacy and other constitutional rights of individuals;

(2) to make a continuing study of the intergovernmental relationship between the United States and the States insofar as that relationship involves the area of investigation or surveillance of individuals; and

(3) as a guide to the several committees of the Congress dealing with legislation with respect to the activities of the United States Government involving the area of surveillance, to file reports at least annually and at such other times as the joint committee deems appropriate, with the Senate and the House of Representatives, containing its findings and recommendations with respect to the matters under study by the joint committee, and, from time to time, to make such other reports and recommendations to the Senate and the House of Representatives as it deems advisable; except that nothing in the foregoing provisions shall authorize the joint committee, or any subcommittee thereof, to examine lawful investigative or

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surveillance activities related to the defense or national security of the United States conducted within the territorial boundaries of the United States citizens. For purposes of this subsection, lawful investigative or surveillance activities related to the defense or national security of the United States means: investigative or surveillance activities carried on by duly authorized agencies to obtain information concerning unlawful activities directed against the Government of the United States which are substantially financed by, directed by, sponsored by, or otherwise involving the direct collaboration of foreign powers.

(b) Nothing in this title shall give the joint committee, or any subcommittee thereof, jurisdiction to examine any activities of agencies and departments of the United States Government conducted outside the territorial boundaries of the United States.

REPORTS BY AGENCIES

Sec. 403. In carrying out its functions, the joint committee shall, at least once each year, receive the testimony, under oath, of a representative of every department and agency of the Federal government which engages in investigations or surveillance of individuals, such testimony to relate to the full scope and nature of the respective agency's or department's investigations or surveillance of individuals, subject to the exceptions provided for in subsections 402 (a) (3) and 402 (b).

POWERS

Sec. 404. (a) The joint committee, or any subcommittee thereof, is authorized, in its discretion (1) to make expenditures, (2) to employ personnel, (3) to adopt rules respecting its organization and procedures, (4) to hold hearings, (5) to sit and act at any time or place, (6) to subpoena witnesses and documents, (7) with the prior consent of the agency concerned, to use on a reimbursable basis the services of personnel, information, and facilities of any such agency, (8) to procure printing and binding, (9) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, and to provide assistance for the training of its professional staff, in the same manner and under the same conditions as a standing committee of the Senate may procure such services and provide such assistance under subsections (i) and (j), respectively, of section 203 of the Legislative Reorganization Act of 1946, and (10) to take depositions and other testimony. No rule shall be adopted by the joint committee under clause (3) providing that a finding, statement, recommendation, or report may be made by other than a majority of the members of the joint committee then holding office.

(b) (1) Subpenas may be issued under the signature of the chairman of the committee or of any subcommittee, or by any member designated by such chairman, when authorized by a majority of the members of such committee or subcommittee, and may be served by any person designated by any such chairman or member.

(2) Each subpoena shall contain a statement of the committee resolution authorizing the particular investigation with respect to which the witness is summoned to testify or to produce papers, and shall contain a statement notifying the witness that if he desires a conference with a representative of the committee prior to the date of the hearing, he may call or write to counsel of the committee.

(3) Witnesses shall be subpoenaed at a reasonably sufficient time in advance of any hearing in order to give the witness an opportunity to prepare for the hearing and to employ counsel, should he so desire. The chairman of the joint committee or any member thereof may administer oaths to witnesses.

(c) The expenses of the joint committee shall be paid from the contingent fund of the Senate from funds appropriated for the joint committee, upon vouchers signed by the chairman of the joint committee or by any member of the joint committee authorized by the chairman.

(d) Members of the joint committee, and its personnel, experts, and consultants, while traveling on official business for the joint committee within or outside the United States, may receive either the per diem allowance authorized to be paid to Members of the Congress or its employees, or their actual and necessary expenses if an itemized statement of such expenses is attached to the voucher.

(e) (1) The District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpoena heretofore or hereafter issued by such joint committee, and the said District Court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpoena.

(2) The joint committee shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpoena heretofore or hereafter issued by such committee, and pray the said District Court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpoena.

(3) The joint committee may be represented by such attorneys as it may designate in any action prosecuted by such committee under this title.

On page 3, line 23, after "Act", insert "(other than title IV)".

On page 4, line 6, after "Act", insert "(other than title IV)".

On page 6, line 9, immediately after "of", insert "titles I, II, and III of".

On page 6, line 12, after "under", insert "titles I, II, and III of".

On page 7, line 1, immediately before "this", insert "titles I, II, and III of".

On page 7, line 2, immediately before "this", insert "title I, II, or III of".

On page 12, line 9, immediately before "this", insert "title I, II, or III of".

On page 16, line 13, immediately before "this", insert "titles I, II, and III of".

On page 18, line 3, immediately before "this", insert "title I, II, or III of".

On page 18, line 14, immediately before "this", insert "title I, II, or III of".

On page 18, line 23, immediately before "this", insert "title I, II, or III of".

On page 19, line 1, immediately before "this", insert "title I, II, or III of".

On page 19, line 21, immediately before "this", insert "title I, II, or III of".

On page 20, line 2, immediately after "Act", insert "(other than title IV)".

On page 20, line 6, immediately before "this", insert "titles I, II, and III of".

CONGRESSIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1850

At the request of Mr. ABOUREZK, the Senator from New Hampshire (Mr. McIntyre) was added as a cosponsor of amendment No. 1850, cutting off aid to Turkey, intended to be proposed to the bill (S. 3394), the Foreign Assistance Act of 1974.

AMENDMENT NO. 1922

At the request of Mr. ABOUREZK, the Senator from Wisconsin (Mr. Proxmire) was added as a cosponsor of amendment No. 1922, prohibiting use of funds by any U.S. agency to violate or encourage the violation of U.S. laws or the laws of the country in which said agency is operating, intended to be proposed to the bill (S. 3394), the Foreign Assistance Act of 1974.

NOTICE OF HEARING

Mr. JACKSON. Mr. President, I wish to announce an open oversight hearing on the Wilderness Act of 1964, relating to various policies which have been and are being formulated to implement its provisions.

The hearing will be held on October 9, beginning at 10 a.m. in Room 3110, Dirksen Senate Office Building.

ADDITIONAL STATEMENTS

CASTRO'S DIATRIBE

Mr. McCLURE. Mr. President, the United States has been kicked in the teeth again. The dictator of Cuba took the opportunity of a visit by two U.S. Senators to issue a diatribe against this Nation which would have been routine if it had not been showcased by their presence.

Castro undermined the alleged purpose of the visit, which was the exploration of improving relationships between the two countries.

I say alleged because the Cuban dictator could not possibly consider calling a country's actions dirty, illicit, and criminal a prelude to friendship. He could not think that blaming world inflation on our Nation's "deplorable imperialist policies" would be conducive to improving relations, not even if he has read every word of detraction published about this country and its citizens both here and abroad.

His Foreign Minister Raul Roa gave the U.S. Senators the clear idea that Cuba was prepared to work toward a more normal relationship with the United States. The fact that Castro then used the opportunity of their visit to deliver a 45-minute denunciation of our country should give us a good motion of what in the Communist Cuban mind constitutes normal relationships.

I think that one thing has been made clear. Cuba's motion of cooperation is to use the good will of other nations in an effort to undermine them.

I would also like to express my concern to those colleagues in this body. They were badly used.

FOREIGN POLICY: MEN OR MEASURES?

Mr. CHURCH. Mr. President, in the October issue of the Atlantic, Thomas L. Hughes, president of the Carnegie Endowment for International Peace, writes an article worthy of the thoughtful attention of every Member of the Congress.

I ask unanimous consent that the article, entitled "Foreign Policy: Men or Measures?" be printed in the Record.